IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 63 OF 2005

P.B. Ibrahim …Petitioner

V/s.

State of Goa and Anr. …Respondents

Mr. V.A. Lawande for the petitioner.
Mr. M.B. D'Costa, Advocate General, with Mr. S.R. Rivonkar, Government Advocate for respondents.

CORAM: **DALVEER BHANDARI, C.J. & N.A. BRITTO, J.**
DATE: **MARCH 18, 2005**

P.C.

The petitioner has prayed that the entire process of pre-qualification tender invited pursuant to the invitation dated 20th January, 2005 be set aside on the ground that the same is arbitrary and discriminatory. The petitioner has also prayed that pending the hearing and final disposal of this petition, this Court may stay the entire process of pre-qualification tender invited pursuant to the said invitation.

2. Brief facts, which are necessary to dispose of this petition, are recapitulated as under:

2.1 Respondent No.1, Government of Goa, issued official gazette notification dated 12th August, 2004, in which it incorporated clause 5.2 which reads as under:

> "No tender form shall be issued to a contracting firm unless it is registered in PWD/WRD, Goa in appropriate class and category except for specialised jobs, for which pre-qualifications and pre-conditions are required to be decided by the Head of the Department of PWD/WRD, Goa."

2.2 The petitioner has challenged the Rules framed by respondent No.1, known as "Rules of Enlistment of Contractors in Public Works Department (PWD)/Water Resources Department (WRD), Goa, 2004", published in the official gazette on 12th August, 2004, by notification dated 2nd August, 2004 in Series I No.20.

3 The petitioner is an Engineer and enlisted as a Class-I P.W.D. Contractor with Karnataka Public Works Department. The petitioner is a proprietory concern. It is stated that the petitioner has the requisite experience and financial capacity to carry out this work.

2.4. The respondent No.2 invited fresh applications for the issue of pre-qualification documents for the work of IRQP/periodical renewal/strengthening of National Highways and State Highways/MDRS in Goa for the year 2005. In the pre-qualification category, an individual has been excluded and pre-qualification documents were given to categories enumerated in the Gazette. According to the eligibility criteria, it is mentioned that the contractor shall have to satisfy the minimum eligibility criteria as detailed below.

"**CLASS 1-A.**

(a) Contractors desiring enlistment in this class shall be private or public limited concerns.

CLASS I-B

(a) Contractors desiring enlistment in this class shall be private or public limited concerns."

The individuals have been excluded from the category of eligible persons who can be granted the contract. In our considered opinion, the qualification laid down by the respondent-State excluding the

individuals is valid criteria and this classification is not hit by Article 14 of the Constitution.

3. A similar matter has come up for consideration before a Division Bench of this Court in Writ Petition No. 338 of 2004 (*Rakesh Navso Kambli vs. Goa Tourism Development Corporation and Anr.)* decided on 28th July, 2004. After considering the rival contentions, this Court came to the conclusion that it appears that in the first instance since the works are less than Rs.15.00 lakhs and, therefore, Class III contractors are eligible to submit their tenders, having regard to the purpose for which the impugned term is introduced, the petitioner's contention cannot be upheld. Undoubtedly, the respondents are entitled to impose such terms as they consider appropriate for the works in respect of which the tenders have been invited. The respondents may also restrict the application from the persons having a certain financial capacity or possessing certain amount of infrastructure or knowledge or experience as may be necessary for this job.

4. In *Directorate of Education and Ors.* Vs. *Educomp*

Datamatics Ltd. and Ors. , reported in 2004 AIR SCW 1505, Their Lordships of the Supreme Court observed that competent authority had taken a decision to invite tenders only from the firms having a turnover of more than Rs.20 crores over last three years. It was contended by the competent authority that the criteria of turnover of 20 crores was prescribed to enable the companies with real competence having financial stability and capacity to participate in the tender. This eligibility condition prescribed in the tender was challenged. The Supreme Court rejected the contention of the petitioner, having regard to the settled position of law that the terms of the invitation to tender are not open to judicial scrutiny, the same being in the realm of contract. The Government must have a free hand in setting the terms of the tender. It must have reasonable play in its joints as a necessary concomitant for an administrative body in an administrative sphere. The Courts would interfere with the administrative policy decision unless the same is arbitrary, discriminatory, mala fide or actuated by bias. In the instant case, the classification, which has been carved out, is a reasonable classification and the respondents are always entitled to carve out such a classification. The petition being devoid of any merit is

accordingly dismissed. In the facts and circumstances of the case, we direct the parties to bear their own costs.

CHIEF JUSTICE

N.A. BRITTO, J. _ -